

FILED
COURT OF APPEALS
DIVISION II

2013 DEC 12 PM 1:15

STATE OF WASHINGTON

BY Ch
DEPUTY

No. 12-1-01893-4

44763-1-II

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION _____

Laranzo D. Murphy,

Appellant,

v.

STATE OF WASHINGTON,

Appellee.

STATEMENT OF ADDITIONAL GROUNDS, RAP 10.10

name: Laranzo Murphy
DOC# 365669, Unit H-2-A-3
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520-9504

135-136

PROCEDURAL HISTORY

Appellant Laronzo D. Murphy was arrested on 8/1/2012 on the charges of Robbery in the first degree and assault in the 2nd degree. Defendant Murphy was subsequently convicted following a jury trial of the afore-stated charges held in Clark County Washington before The Honorable Superior Court Judge Daniel Stahnke on 3/27/13, cs.no. 12-1-01393-4. At sentencing, the Court handed down a sentence of 173 months of confinement for the Robbery 1 and 98 months of confinement for the assault 2 with weapons enhancements of 60 and 36 months respectively. Appellant Murphy hereby moves to have your distinguished Court remand this case pursuant to the controlling dictates of our State Supreme Court cited to and relied upon herein.

STARE DECISIS/EQUAL PROTECTION

The Doctrine of Stare Decisis commands a reviewing Court to abide by or adhere to decided cases. "The Doctrine of Stare Decisis is of fundamental importance to the rule of law." "It is indisputable that Stare Decisis is a basic self-governing principle within the Judicial Branch, which is entrusted with the sensitive and difficult task of fashioning and preserving a jurisprudential system that is not based upon "an arbitrary discretion" The Federalist, no. 78, p.490 (H.Lodge Ed. 1888)(A. Hamilton)

Patterson v. McClean Credit Union 109 S.Ct. 2363, 2370. "Stare Decisis ensures that "the law will not merely change erratically and "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals." Vazquez v. Hillery 474 U.S. 239 254, 265. The Kier 164 Wn. 2d 798 (2008), Zumwalt 119 WN.App 126 (2003), Freeman 153 WN.2d 765 (2005), Charles 135 WN.2d 239 and Anderson 92 WN.App 54 cases are in fact settled and controlling precedents from which a reviewing Court may not depart pursuant to the Doctrine of Stare Decisis. Accordingly, the same result must obtain here in Appellant Murphys case as prevailed for the afore-mentioned petitioners.

"The Equal Protection clause of the 14th Amendment commands that no State shall deny to any person within its' jurisdiction the Equal Protection of the laws, 'which is essentially a direction that all persons similiarly situated be treated alike." Lee v. City of Los Angeles 250 F.3d 668 at 686 (9th Cir. 2001) (ci-

ting to City of Clebourne v. Clebourne Living Ctr. 473 U.S. 432, 439). "The Equal Protection clauses of both the State and Federal Constitutions require that 'persons similiarly situated with respect to the legitimate purpose of the law recieve like treatment.'" In Re Runyan 121 WN.2d 432, 448. Appellant Murphy is "similiarly situtated" Runyan 121 WN.2d at 448 to Appellants Kier (164 WN.2d 798) and Zumwalt (119 WN.App 126) by way of the fact that he was erroneously convicted of both Robbery 1 and Assault 2 in a manner indistinguishable from the governing and controllling precedents. Appellant Murphy is "similiarly situated" Runyan 121 WN.2d at 448 to Appellants Charles (135 WN.2d 239) and Anderson (92 WN.App 44) by way of the fact that his weapons enhancements were ran consecutive to each other as well as consecutive to their base sentences notwithstanding the controlling legal themes of the Charles and Anderson Courts. As a result, this case must be remanded for further proceedings consistent with these opinions.

MEMORANDUM OF LAW

a.) Double Jeopardy- "A Double jeopardy claim can be raised for the first time on appeal." State v. Zumwalt 119 WN.App 126, 129. "No person may be "twice put in jeopardy of life or limb" for the same offense." Zumwalt 119 WN.App at 130 citing to Fletcher 113 WN.2d 42, 46. "This is a Constitutional guarantee applied to the States by the 14th Amendment""The Washington Constitution affords identical protection against double jeopardy. Const.Art 1 ss 9." Zumwalt 119 WN.App at 130 citing to Gocken 127 WN.2d 95, 107. "Whether two crimes constitute the same offense for double jeopardy purposes depends on the legislative intent." Zumwalt 119 WN.App at 131. "We find no evidence that the legislature intended to punish second degree assault separately from first degree robbery when the assault facilitates the robbery." State v. Freeman 153 WN.2d at 758. Here in the instant case as detailed hereafter, the assault in question "facilitated" the robbery Appellant Murphy was convicted of. Moreover, "Notably, the legislature has amended the second degree assault statute since Freeman without taking any action in response to our decision. We are confident that our analysis in Freeman accurately ref-

lects the legislatures intent." State v. Kier 164 WN.2d 798, 805.

Ricky McKeen testified that he owed Appellant LaRenze Murphy \$100.00 (see trial trans. pgs. 145) and some change. His testimony reflects that he first gave Murphy \$100.00 from his pocket and then gave Murphy \$50.00 from his wallet (see trial trans. pgs. in Police Record). After this last exchange, Murphy then "displayed" the firearm which constituted the 2nd degree assault and drove off. "The commission of the assault 2 did not have an "independent purpose or effect." State v. Freeman 153 WN.2d 765, 778-79. Its "only" "purpose" was to procure the money and "only" "effect" was to facilitate the Robbery. The Freeman Court held this to be a dispositive fact. Absent the Assault 2, there would be no First Degree Robbery. "As charged and proven, without the conduct amounting to assault, each would be guilty of only second degree robbery. Under the Merger rule, assault committed in furtherance of a Robbery merges with Robbery." State v. Freeman 153 WN.2d at 778. "The Merger doctrine is triggered when 2nd degree assault with a deadly weapon elevates robbery to the first degree because being armed with or "displaying" a firearm or deadly weapon to take property through force or fear is essential to the elevation." State v. Kier 164 WN.2d 798, 806. If this fact pattern ends after McKeen gives Murphy the \$50.00 from his wallet and before Murphy "displays" the firearm, the trier of fact is left with at best a robbery 2. "The fact remains that the completed assault was necessary to elevate the completed robbery to first degree." State v. Kier 164 WN.2d 798, 807. "When an assault elevates the degree of robbery, Courts have regularly concluded that the two offenses are the same for double jeopardy purposes." State v. Freeman 153 WN.2d 765, 774 (See also Kier 164 WN.2d 798, 801-02). "Only if there is proof of a second assault will both convictions stand." State v. Zumwalt 119 WN.App 126, 132. Here in the instant case, the record reflects only evidence of a single assault, "An assault that elevated simple robbery to robbery in the first degree." State v. Zumwalt 119 WN.App at 132. "And the Double Jeopardy problem cannot be avoided by imposing concurrent sentences for the two crimes and characterizing them as the "same criminal conduct". see former RCW 9.94A. 400(i)(a) (2001). "Double Jeopardy is implicated regardless of whether sentences are imposed to run concurrently." Zumwalt 119

WN.App at 132 (Reversed and Remanded). "Vacation of the assault charge is so ubiquitous that the model form in Washington Practice for a motion to merge counts at sentencing lists assault and robbery in the text of the model form." Freeman 153 WN.2d at 774. Moreover, at Kier (164 WN.2d 798), Appellant Kiers assault was found to merge with his robbery notwithstanding the fact that "the crimes were committed against separate victims" id at 808. Appellant Murphys case therefore reveals a more egregious error as each of his respective counts were committed against a "single" victim. "We are persuaded that Freeman correctly analyzed the robbery and assault statutes to conclude that second degree assault merges into first degree robbery." State v. Kier 164 WN.2d 798, 805. Accordingly, Appellant Murphys Assault conviction must be vacated and this case remanded for re-sentencing.

b.) Rule of Lenity- Following trial, Superior Court Judge Daniel Stahnke sentenced then-defendant Murphy in such a way that each of his weapons enhancements ran consecutive to each other. At Charles 135 WN.2d 239, The State argued "that the statute (weapons enhancement, Init. 159) means that any and all enhancements should run consecutively with every "other sentencing provision" and that the phrase includes other firearm enhancements." Charles 135 WN.2d 239, 249. The Supreme Court however found that RCW 9.94A.310(3)(e) was "ambiguous" Charles 135 WN.2d at 250 as it could be interpreted "reasonably in two or more different ways." Charles 135 WN.2d at 250 citing to McGee 122 WN.2d 783, 787. Such a disposition must be resolved in favor "of a criminal defendant" pursuant to the Rule of Lenity and as a result the Supreme Court remanded for re-sentencing. At State v. Anderson 92 WN.App 54, Appellant Andersons charges were the same as Appellant Murphys are in the instant case, Robbery 1 and Assault 2 with deadly Weapons enhancements on each. The Anderson Court held "that the multiple weapons enhancements provided for in the "Hard time for Armed Crime" initiative do not necessarily run consecutive to each other." id at 63. The Court also held that "Andersons objection to this sentencing decision may also be

raised for the first time on appeal." id at 63. "Anderson is entitled to a remand for re-sentencing" id at 63 and upon said remand the sentencing Court ran the weapons enhancements "concurrent" with each other. Appellant Murphy likewise moves to be re-sentenced in a manner not inconsistent with the precedents relied upon herein.

CONCLUSION

The facts detailed herein clearly establish by and through controlling Supreme Court and Appellate Court precedent that Appellant Murphy is entitled to the relief requested herein and he respectfully moves to have your distinguished Court find likewise.

Respectfully Submitted,
Mr. LaRanzo D. Murphy
The Appellant.

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OF THE STATE OF WASHINGTON

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Respondent,

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No. 12-1-01393-4

DEPUTY

Laranzo Murphy

(your name)

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

Appellant.

I, Laranzo Murphy, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: 12/10/13

Signature: Laranzo Murphy